Supreme Court, U.S.
FILED

99 521 SEP 23 1999

OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

LESLIE FITZGERALD, ELIZABETH HARLING AND CHARLES HUGGINS,

Petitioners,

VERSUS

RICHARD STALDER, INDIVIDUALLY, AND IN HIS CAPACITY AS SECRETARY, LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Louisiana

PETITION FOR WRIT OF CERTIORARI

FREDERICK R. PARKER, JR.
Attorney at Law
400 Travis Street, Suite 1601
Shreveport, Louisiana 71101-3183
(318) 222-4396
Counsel of Record

J. PATRICK HENNESSY
PETERS, WARD, BRIGHT & HENNESSY
400 Texas Street, Suite 1000
P. O. Box 91
Shreveport, Louisiana 71161-0091
(318) 221-8000

Attorneys for Petitioners

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

35 pp

QUESTION PRESENTED

Are the local taxing authorities in Louisiana violating the Commerce Clause of the Constitution and the Equal Protection Clause of the Fourteenth Amendment by enforcing their use taxes only against persons who move into their respective jurisdictions from other States, without also enforcing these taxes against current Louisiana residents who move into the same jurisdictions, but from elsewhere in Louisiana?

PARTIES

The parties to this proceeding are the Petitioners, Leslie Fitzgerald, Elizabeth Harling, and Charles Huggins, who seek to be appointed as representatives of a class of all similarly situated persons, and the Respondents, Richard Stalder, Kay Covington, Edward Fitch, The Caddo Parish School Board, The Caddo Parish Sales Tax District No. 1, The Caddo Parish Law Enforcement District, The City of Shreveport, Jerry McWherter, The Natchitoches Parish School Board, The Natchitoches Parish Police Jury, and The Village of Natchez, who the Petitioners seek to have appointed as representatives of a class of all similarly situated taxing authorities.

TABLE OF CONTENTS

Page

QUESTION PRESENTED..... i

PARTIES ii

TABLE OF AUTHORITIES..... iv

OPINIONS BELOW..... 1

JURISDICTION..... 1

CONSTITUTIONAL PROVISIONS AND STATUTES... 1

STATEMENT OF THE CASE..... 2

REASONS FOR GRANTING THE WRIT 3

CONCLUSION 13

APPENDIX A – Decision of the Supreme Court of Louisiana.....App. 1

APPENDIX B – Decision of the Louisiana Court of Appeal for the First Circuit.....App. 3

APPENDIX C – Decision of the Nineteenth Judicial District Court, State of Louisiana, Parish of East Baton Rouge .....App. 8

APPENDIX D – Sections 2.01 and 5.03 excerpted from the Natchitoches Parish School Board Sales and Use Tax Ordinance.....App. 11

APPENDIX E – Sections 150-526, -576, -577, and -578, excerpted from the New Orleans Code App. 14

TABLE OF AUTHORITIES

Page

CASES

Associated Industries of Missouri v. Lohman, 511 U.S. 641 (1994) 9, 10

D.H. Holmes Co. v. McNamara, 486 U.S. 23 (1988) 8

Haliburton Oil Well Cementing Co. v. Reily, 373 U.S. 64 (1963) 8, 9

Nippert v. City of Richmond, 327 U.S. 416 (1946) 8

Saenz, Director, California Dep't of Social Services, et al v. Roe, No. 98-97, 1999 WL 303743 (U.S.) (May 17, 1999) 7, 8

Westinghouse Electric Corp. v. Tulley, 466 U.S. 388 (1984) 8

Williams v. Vermont, 472 U.S. 14 (1985) 7, 8

STATUTES

Natchitoches Parish School Board Sales and Use Tax Ordinance 2, 4, 5

New Orleans Code 4, 5

OPINIONS BELOW

The July 2, 1999 decision of the Supreme Court of Louisiana in *Fitzgerald v. Stalder* is reported at No. 99-1821 (La. 7/2/99); 1999 WL 513705 (La. Jul 02, 1999) (Appendix A). The decision of the Louisiana Court of Appeal for the First Circuit (Appendix B) is reported at 98-0711 (La. App. 1st Cir. 4/1/99), 731 So. 2d 500, and the decision of the trial court (Appendix C) is unpublished.

JURISDICTION

The decisions of the trial court and the Louisiana Court of Appeal for the First Circuit became final on July 2, 1999, when the Louisiana Supreme Court denied the Petitioners' Petition for Writ of Certiorari. This Petition is filed within the time allowed by law, and the jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS AND STATUTES

Article I, Section VIII, Clause III:

The Congress shall have Power . . . to regulate commerce . . . among the several States.

Amendment 14, Section 1:

[N]or shall any State . . . deny to any person within its jurisdiction the equal protection of the laws.

Natchitoches Parish School Board Sales and Use Tax Ordinance, Section 2.01:

> There is hereby levied . . . a tax upon the . . . use . . . of tangible personal property within the Parish. . . . [1]

STATEMENT OF THE CASE

The Petitioners sought summary judgment in the Trial Court declaring that the various local taxing authorities in Louisiana have been and are now collecting local use taxes in a manner that violates the Commerce Clause of the Constitution and the Equal Protection Clause of the Fourteenth Amendment. The Petitioners also sought relief in the form of an order for the refund of these taxes. The Trial Court denied the Petitioners' motion, rendering, instead, summary judgment in favor of one of the local taxing authorities, the Natchitoches Parish School Board, and holding that the facts of this case gave rise to no constitutional violation. The Petitioners appealed the grant of Summary Judgment in favor of the Natchitoches Parish School Board. The Louisiana Court of Appeal for the First Circuit affirmed the Trial Court's judgment, and

[1] Each local taxing jurisdiction in Louisiana that imposes a use tax does so on the same basis as does the Natchitoches Parish School Board, except for the rate of the tax.

the Supreme Court of Louisiana denied the Petitioners' application for a writ of certiorari.[2]

REASONS FOR GRANTING THE WRIT

This case involves a challenge to the manner in which use taxes are collected by the local taxing authorities in Louisiana. Only taxes levied by local authorities are at issue (*i.e.*, use taxes imposed by the various parishes, cities, towns, school boards, and other such local authorities – these local taxes are distinct from the similar taxes imposed by the State of Louisiana, which are not involved here). More specifically, although these taxes apply to all types of tangible personal property, this case relates only to those taxes as they apply to various types of vehicles that must be registered with the State (as an

[2] The only substantial issues in this case involve the Equal Protection Clause and Commerce Clause. The Petitioners raised these issues when they originally filed this case and when they filed their "First Supplemental, Amended and Restated Petition for Refund of Use Taxes and for Attorneys Fees". They raised the issues again in "Plaintiffs' Motion for Summary Judgment" and the brief attached thereto, and in "Plaintiffs' Opposition to Defendant's Motion for Summary Judgment" (part of their argument was referenced in the trial court's opinion (Appendix C)). The Petitioners reiterated their constitutional arguments in their "Original Brief by Plaintiffs-Appellants, Leslie Fitzgerald, Elizabeth Harling, and Charles Huggins" filed in the Louisiana Court of Appeal for the First Circuit (the arguments are referred to in the opinion by the Court of Appeal (Appendix B)), and in their "Petition for Writ of Certiorari or Review on Behalf of Leslie Fitzgerald, et al., Plaintiffs-Applicants" filed in the Louisiana Supreme Court.

administrative matter, the Vehicle Commissioner of the State of Louisiana collects these taxes as agent for the various local taxing authorities, and he does so when the vehicles are presented for registration).

Nearly every local taxing authority in Louisiana has chosen to employ sales and use taxes as a source of revenue. Each of these authorities imposes its own taxes independently of the other political subdivisions of the State, and they do so at rates that vary from one jurisdiction to another. The City of Natchitoches, for example, imposes its taxes at the rate of 2½%, while the City of New Orleans levies a 5% tax.[3] At least one local authority, however, does not impose this type of tax at all (Cameron Parish imposes no sales or use taxes).

Because the taxes imposed by the various local authorities are independent exactions, they apply only to transactions that take place within the geographic limits of the respective taxing jurisdictions. The tax levied by the Natchitoches Parish School Board, for example, would accrue when a person imports an item of "tangible personal property" (such as a motor vehicle) for use within the confines of that jurisdiction. Natchitoches Parish School Board Sales and Use Tax Ordinance, Section 2.01. Likewise, a person would become liable for the tax imposed by the City of New Orleans when he imports property for use in that city. New Orleans Code, Art. VI, Sections 150-576 and 150-578. Accordingly, a Texas resident who moves to New Orleans and imports a vehicle

---

[3] These percentages represent the cumulative rates charged by the various local taxing authorities within these cities.

for use there would become liable for a New Orleans use tax equal to 5% of his vehicle's value. The same would be true of a current Louisiana resident who imports an identical vehicle when he moves to New Orleans from elsewhere in the State, such as Natchitoches. Again, these taxes apply any time a person imports property for use in a local taxing jurisdiction, and without regard to whether he imports the property from another local jurisdiction in Louisiana or from another State.[4]

Notwithstanding the fact that both current residents and new residents would be liable for the same taxes, the local taxing authorities in Louisiana openly admit that, as a matter of policy, they enforce their taxes only against persons who move into their jurisdictions and import property from other States; they never enforce them against current Louisiana residents who move into the

---

[4] Because the local taxing authorities adopted the use taxes at issue here in order to complement their related sales taxes, one might expect that a person who imports property into a local jurisdiction would be liable for that jurisdiction's use taxes only to the extent they exceed the sales taxes he paid elsewhere. In fact, each of the local tax ordinances in Louisiana embraces this expectation by expressly requiring tax credits for taxpayers who paid similar taxes in other jurisdictions. *See, e.g.*, Natchitoches Parish School Board Sales and Use Tax Ordinance, Section 5.03 and New Orleans Code, Art. VI, Section 150-526. Notwithstanding this requirement, the local taxing authorities, as a matter of custom and policy, do not grant such credits. As a practical matter, therefore, the fact that a person might have paid a local sales tax when he purchased a vehicle in one local taxing jurisdiction has no bearing on his liability for an additional use tax when he later moves to another jurisdiction, regardless of whether the taxpayer moved from elsewhere in Louisiana or from another state.

same jurisdictions and import property from elsewhere in the State.

Assume, for example, that a current resident moves into New Orleans from another local jurisdiction in the State, and that another person moves into the city from Texas. Assume also that each of these persons imports a vehicle worth $20,000. The person who moved from Texas would be required to pay local use taxes at the rate of 5%, or in the amount of $1,000 (as noted above, the New Orleans authorities would assess the full amount of this tax even if the new resident had already paid a similar tax in Texas, for which they grant no credit). The person who moved from another Louisiana political subdivision, however, would not be required to pay any local use taxes in New Orleans at all, even though the governing ordinances would impose on him exactly the same liability (and even if he had not paid any similar local taxes elsewhere in Louisiana). In other words, the new resident who moved from Texas would be required to pay taxes that the current Louisiana resident would avoid, and he would have to do so simply because he imported his vehicle from another State.

The Petitioners, who were required to pay such taxes when they moved from other States, were aggrieved by this practice which, according to the established jurisprudence of this Court, violates the Commerce Clause of the Constitution and the Equal Protection Clause of the Fourteenth Amendment.

I. The Equal Protection Clause Violation

The Equal Protection Clause of the Fourteenth Amendment to the Constitution provides that "nor shall any State . . . deny to any person within its jurisdiction the equal protection of the laws." The Court invoked this clause in *Williams v. Vermont*, 472 U.S. 14 (1985), to strike down taxes that discriminated among taxpayers on the basis of residence.

Williams involved the constitutionality of a use tax imposed by Vermont upon the registration and use of motor vehicles in that State. This tax was not imposed upon persons who bought cars and paid the related sales taxes in Vermont. Nor was the tax imposed upon Vermont residents who bought cars in other States, paid the related taxes there, and then brought their vehicles into Vermont. Imposition of the tax, therefore, was limited to non-residents who bought their cars in other States prior to moving to Vermont. In light of these facts, the *Williams* Court concluded that Vermont's use tax scheme violated the Equal Protection Clause: "a State may not treat those within its borders unequally solely on the basis of their different residences or States of incorporation." 472 U.S. at 23. (*See also Saenz, Director, California Dep't of Social Services, et al v. Roe*, No. 98-97, 1999 WL 303743 (U.S.) (May 17, 1999), in which the Court held that "the 'right to travel' . . . protects the right of a citizen of one State to enter and leave another State, the right to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in the second State, *and, for those travelers who elect to become permanent residents, the right to be treated like other citizens of that State.*")

This Court's analysis in *Williams* and *Saenz* applies with equal force to the facts of this case. As noted above, the local taxing authorities in Louisiana enforce their use taxes only against persons who move from other States; they never enforce these taxes against persons who move from elsewhere in Louisiana. By so discriminating among taxpayers solely on the basis of their former residence, these authorities are enforcing their taxes in violation of the Equal Protection Clause.

II. The Commerce Clause Violation

The Commerce Clause provides that "the Congress shall have power . . . to regulate commerce with foreign nations, and among the several States, and with the Indian tribes." United States Constitution, Article I, Section 8, Clause 3. The Court consistently has held that this clause prevents the States from imposing taxes that discriminate against interstate commerce, and that this proscription applies even where the Congress has not acted in an affirmative way under its Commerce Clause authority. *See D.H. Holmes Co. v. McNamara*, 486 U.S. 23, 29 (1988). The logical corollary to this fundamental concept is that the Commerce Clause also prohibits the States from enforcing, in a discriminatory manner, tax statutes that are facially neutral. *See, e.g., Westinghouse Electric Corp. v. Tulley*, 466 U.S. 388, 406 (1984); and *Nippert v. City of Richmond*, 327 U.S. 416, 425 (1946).

It is well settled that the Commerce Clause requires equal treatment for similarly-situated taxpayers. For example, the Court held in *Haliburton Oil Well Cementing Co. v. Reily*, 373 U.S. 64 (1963), that "equal treatment for

in-state and out-of-state taxpayers similarly situated is the condition precedent for a valid use tax on goods imported from out of State." 373 U.S. at 70.

The Court later applied the same precept in *Associated Industries of Missouri v. Lohman*, 511 U.S. 641 (1994). The tax scheme under review in *Associated Industries* imposed a series of State sales taxes at the aggregate rate of 4.225% of sales made in Missouri. These taxes corresponded to State use taxes imposed at the same combined rate on goods purchased outside of Missouri but used in the State. In addition to these complementary taxes, Missouri imposed a separate 1½% State use tax on goods purchased outside the State. The *Associated Industries* Court found that the additional tax unconstitutionally discriminated against interstate commerce because goods imported from other States were subject to a higher tax than were goods purchased in Missouri:

> Where the use tax exceeds the sales tax, the discrepancy imposes a discriminatory burden on interstate commerce. Out-of-State goods brought into such a jurisdiction are subjected to a higher levy than goods sold locally. The resulting disparity is incompatible with what we have termed the "strict rule of equality" adopted in *Silas Mason* [300 U.S. 577 (1937)]. 511 U.S. at 649.

The local taxing authorities in Louisiana are collecting their use taxes in a manner that results in such a disparity. The point can best be illustrated by comparing the local sales and use taxes that a current Louisiana resident pays when he buys a car in one local jurisdiction and then moves to another jurisdiction within the State, on the one hand, and the local use taxes that a non-

resident pays when he moves into the latter jurisdiction from another State.

As noted above, the local jurisdictions in Louisiana that impose sales and use taxes do so at significantly different rates. In fact, at least one jurisdiction (Cameron Parish) imposes no sales or use taxes at all. The local sales and use tax rates in Louisiana, therefore, range from zero to 5%.

Assume that a Louisiana resident purchases a car when he lives in Cameron Parish, and that he later decides to move to New Orleans. Assume also that a Texas resident moves to New Orleans at the same time. Finally, assume that these persons bring with them identical vehicles worth $20,000. Although both of these persons would owe the same local use taxes to the authorities in New Orleans, only the person who moved from Texas would be required to pay them. The current Louisiana resident would be able to avoid his liability simply because of his status as a resident. Moreover, he would have paid no local sales taxes when he bought his car, because Cameron Parish imposes no such exaction. In effect, therefore, the person who moved from Texas would be required to pay $1,000 more in local use taxes than the current Louisiana resident would have paid in local sales taxes. This result cannot be squared with the standard enunciated in *Associated Industries*.

III. The Lower Courts' Error

The lower courts held that the local taxing authorities are not unlawfully discriminating against taxpayers on the basis of residence because current Louisiana residents

are required to pay local *sales* taxes when they buy vehicles in their local jurisdictions, and non-residents are required to pay local *use* taxes in a corresponding amount when they import vehicles into the same jurisdictions from other States:

> When registering a vehicle for the first time in Louisiana, the new resident pays the same amount of local use tax as the long-time resident pays in sales tax. Thus, the sales and use taxes are complementary and non-discriminatory. *Fitzgerald v. Stalder*, 98-0711 (La. App. 1 Cir. 4/1/99), 731 So.2d 500, 501. Appendix B.

The Petitioners agree that Louisiana's local sales and use tax scheme, as drafted, creates no unconstitutional disparity between the treatment of a current Louisiana resident who buys a car in a local jurisdiction of the State and a non-resident who imports a car into the same jurisdiction from another State. Each of those persons would be required to pay the same amount of sales and/or use taxes – the current resident would pay a local sales tax when he buys a car in the local jurisdiction, and the non-resident would pay a corresponding local use tax when he moves into that jurisdiction and imports a car for use there. For example, a Louisiana resident who lives in New Orleans and buys a car for $20,000 in the city will be required to pay a local sales tax of $1,000 (*i.e.*, 5% of the purchase price). Likewise, a non-resident who moves to New Orleans from Texas will be required to pay a corresponding use tax in the same amount when he imports an identical car for use in the city.

Yet, by comparing only the application of a local tax on the purchase of property within a taxing jurisdiction

with the imposition of a local tax on the use of property bought outside of that jurisdiction and later imported for use there, the lower courts merely acknowledged the intended complementary nature of the sales and use tax scheme, as drafted. The validity of that acknowledgment, however, rests upon the even-handed enforcement of these related exactions against all persons who import property for use in the taxing jurisdictions, and without regard to whether they imported the property when they moved from other local jurisdictions in Louisiana or whether they did so when they moved from other States. The designed symmetry in the scheme, therefore, is meaningless as a reference point when the use tax is not so enforced. It is this defect in practice which the lower courts ignored and which gives rise to the unconstitutional disparity complained of here.

Assume again that two persons move into the City of New Orleans and import identical vehicles for use there. Assume further that one of these persons moved from Texas, and that the other was a current Louisiana resident who moved from elsewhere in the State. Although the person who moved from Texas would be required to pay local use taxes to the authorities in New Orleans, the current Louisiana resident would not be required to pay any such taxes at all (even if he never paid any local sales taxes when he purchased his car in his previous domicile). By distinguishing between these persons solely on the basis of their different States of residence, the local taxing authorities in Louisiana are violating both the Commerce Clause of the Constitution and the Equal Protection Clause of the Fourteenth Amendment.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

FREDERICK R. PARKER, JR.
400 Travis Street, Suite 1601
Shreveport, Louisiana 71101-3183
(318) 222-4396
Counsel of Record

J. PATRICK HENNESSY
PETERS, WARD, BRIGHT & HENNESSY
400 Texas Street, Suite 1000
Post Office Box 91
Shreveport, Louisiana 71161-0091
(318) 221-8000

Counsel for Petitioners

APPENDIX A

The Supreme Court of the State of Louisiana

LESLIE FITZGERALD, ELIZABETH HARLING, CHARLES HUGGINS AND ALL SIMILARLY SITUATED CLASS MEMBERS — NO. 99-C – 1821

VS.

RICHARD STALDER, INDIVIDUALLY AND IN HIS CAPACITY AS SECRETARY, LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, JOHN POLITZ, INDIVIDUALLY, IN HIS CAPACITY AS THE ADMINISTRATOR OF THE OFFICE OF MOTOR VEHICLES, AND IN HIS CAPACITY AS THE VEHICLE COMMISSIONER OF THE STATE OF LOUISIANA ET AL

IN RE: Fitzgerald, Leslie; Harling, Elizabeth; Huggins, Charles; – Plaintiff(s); Applying for Writ of Certiorari and/or Review; Parish of East Baton Rouge 19th Judicial District Court Div. "I" Number 401,895; to the Court of Appeal, First Circuit, Number 98 CA 0711

July 2, 1999

Denied.

HTL
PFC
WFM
CDK

JPV
CDT
JTK
JOHNSON, J. not on panel.

Supreme Court of Louisiana

July 2, 1999

/s/ Illegible
Clerk of Court
For the Court

APPENDIX B

STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT

NUMBER 98 CA 0711

LESLIE FITZGERALD, ELIZABETH HARLING, CHARLES HUGGINS AND ALL SIMILARLY SITUATED CLASS MEMBERS

VERSUS

RICHARD STALDER, INDIVIDUALLY AND IN HIS CAPACITY AS SECRETARY, LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, JOHN POLITZ, INDIVIDUALLY, IN HIS CAPACITY AS THE ADMINISTRATOR OF THE OFFICE OF MOTOR VEHICLES, AND IN HIS CAPACITY AS THE VEHICLE COMMISSIONER OF THE STATE OF LOUISIANA, ET AL.

JUDGMENT RENDERED: April 1, 1999

* * *

Appealed from the 19th Judicial District Court
in and for East Baton Rouge Parish, Louisiana
Trial Court No. 401,895
Honorable R. Michael Caldwell, Judge

J. Patrick Hennessy
Frederick R. Parker, Jr.
Shreveport, LA

Matthew J. Ungarino
Metarie, LA

Attorneys for Plaintiffs/
Appellants

Attorney for Defendant/
Appellee Natchitoches
Parish School Board

BEFORE: CARTER, C.J., SHORTESS AND WHIPPLE, JJ.

SHORTESS, J.

Leslie Fitzgerald, Elizabeth Harling, and Charles Huggins (plaintiffs) moved to Louisiana from Florida, New Jersey, and California, respectively. Each was required to pay a local use tax when registering his or her vehicle with the State of Louisiana. Plaintiffs sued for a refund of those taxes, naming multitudinous defendants and alleging various theories, all of which have changed over the course of the litigation.

Plaintiffs sought to have themselves certified as representatives of the class of all persons who have brought vehicles into Louisiana from other states and registered them pursuant to the Louisiana Vehicle Registration License Tax law, Louisiana Revised Statute 47:451 through 540. Plaintiffs named nine taxing authorities from Caddo and Natchitoches Parishes in their "First Supplemental, Amended and Restated Petition" and sought to have them certified as representative defendants. Plaintiffs allege in their restated petition that because local use taxes are collected from those who move into Louisiana from other states but are not collected from Louisiana residents who move from one parish or political subdivision to another, the tax-collection process violates the Commerce and Equal Protection Clauses of the United States Constitution. Plaintiffs contend they are entitled to damages equal to the amount of taxes they paid and attorney fees under 42 U.S.C. §§ 1983 and 1988.

Plaintiffs moved to certify the class. They also moved for summary judgment. One of the putative-representative defendants, the Natchitoches Parish School Board

(defendant), also moved for summary judgment. The trial court denied plaintiffs' motions for class certification and summary judgment but granted defendant's motion for summary judgment, dismissing plaintiffs' claims against it. Plaintiffs' motion for new trial on the class certification was denied. Plaintiffs applied for supervisory writs on the denial of their motions and, after the trial court certified it as final, appealed the judgment dismissing defendant. The issues raised in plaintiffs' writ are addressed in our decision rendered this date under docket number 98 CW 0384. This appeal addresses only the propriety of granting defendant's motion for summary judgment.

Plaintiffs contend the Commerce and Equal Protection Clauses are violated when someone who moves into Louisiana is forced to pay a local use tax, while a Louisiana resident who moves from one taxing jurisdiction in Louisiana to another pays no use tax. Defendant, on the other hand, contends plaintiffs are comparing the wrong two events. The trial court agreed, stating plaintiffs were "attempting to compare apples and oranges." The trial court found the "apples-to-apples" comparison was made by looking at what occurs when a vehicle is registered in this state for the first time, whether by a Louisiana resident or by one who has just moved here. The Louisiana resident pays a local sales tax, while the person who moves into the state pays a comparable use tax. Thereafter, the vehicles are treated identically if they are moved to another taxing jurisdiction within the state, i.e., no local use tax is collected.

The Commerce Clause has long been understood to deny the States the power to discriminate unjustifiably

against or burden the interstate flow of articles of commerce.[1] The first step to analyzing any law subject to judicial scrutiny under the Commerce Clause is to determine whether it regulates evenhandedly with only incidental effects on interstate commerce, or whether it discriminates against interstate commerce. "Discrimination" as used in this context means simply the differential treatment of in-state and out-of-state economic interest that benefits the former and burdens the latter.[2]

Even if the law is facially discriminatory because it imposes a burden on interstate commerce, if [sic] does not offend the Commerce Clause if a complementary, i.e., an identifiable and substantially similar, burden is imposed on intrastate commerce.[3] The "prototypical example" of complementary burdens are sales and use taxes.[4]

We agree with the trial court that when an "apples-to-apples" comparison is made, no discrimination is shown. The first-time registration by someone moving into the state is the only action herein that affects interstate commerce. When registering a vehicle for the first time in Louisiana, the new resident pays the same amount of local use tax as the long-time resident pays in sales tax. Thus, the sales and use taxes are complementary and non-discriminatory. Plaintiffs have failed to

---

[1] Oregon Waste Systems v. Dep't of Envtl. Quality, 511 U.S. 93, 98 (1994).

[2] Id. at 99.

[3] Id. at 103.

[4] Id. at 105.

show discrimination affecting interstate commerce, and the trial court correctly granted summary judgment in defendant's favor. for these reasons, the judgment of the trial court is affirmed at plaintiffs' cost.

AFFIRMED.

APPENDIX C

LESLIE FITZGERALD, ET AL	NO. 401,895 DIVISION "I"
VS.	19TH JUDICIAL DISTRICT COURT
RICHARD STALDER, ET AL	PARISH OF EAST BATON ROUGE
	STATE OF LOUISIANA

ORAL REASONS FOR JUDGMENT
TUESDAY, JANUARY 20, 1998
THE HONORABLE R. MICHAEL CALDWELL,
JUDGE PRESIDING

WE HAVE BEFORE US TODAY A MOTION FOR SUMMARY JUDGMENT FILED BY THE NATCHITOCHES PARISH SCHOOL BOARD. ADDRESSED IS THE ISSUE OF – WELL, BOTH THE ISSUE OF LIABILITY AS A MATTER OF LAW AND AS TO WHETHER IT IS A PROPER DEFENDANT, GIVEN ITS AGENCY RELATIONSHIP WITH THE STATE, WHO IS THE COLLECTING AGENCY.

AS MR. HENNESSY POINTED OUT IN HIS ARGUMENT, LOCALS DON'T HAVE ANYTHING TO DO WITH COLLECTING THE TAX, IT IS ALL THE STATE.

BUT, THE COURT HAS REVIEWED, WITH INTEREST, THE DECISION OF THE UNITED STATES SUPREME COURT IN THE HALLIBURTON OIL WELD CASE. I KNOW IT'S A RELATIVELY OLD CASE; IT DOES ADDRESS VERY SIMILAR ISSUES AS THEY ARE APPLIED UNDER THE COMMERCE CLAUSE OF THE U. S. CONSTITUTION. THE COURT POINTS OUT IN THAT CASE THAT, IN EACH CASE, IT IS THE COURT'S

DUTY TO DETERMINE WHETHER THE STATUTE UNDER ATTACK WILL, IN ITS PRACTICAL OPERATION, WORK DISCRIMINATION AGAINST INTERSTATE COMMERCE. THE COURT ALSO NOTED THAT EQUALITY, FOR THE PURPOSES OF COMPETITION IN THE FLOW OF COMMERCE, IS MEASURED IN DOLLARS AND CENTS, NOT LEGAL ABSTRACTIONS. AND IN HIS CONCURRING OPINION, JUSTICE BRENNAN POINTS OUT THAT, IN PRIOR DECISIONS, the COURT HAD INTIMATED THAT A STATE MAY NOT BE CONSTITUTIONALLY OBLIGATED TO CREDIT THE AMOUNT OF SALES TAX PAID IN OTHER STATES AGAINST THE USE TAX IT IMPOSES AND, ACCORDINGLY, THE CONSTITUTION DOES NOT MANDATE ABSOLUTE EQUALITY OF TREATMENT AS BETWEEN IN-STATE AND OUT-OF-STATE SALES, IT MERELY FORBIDS DISCRIMINATORY TREATMENT BY THE STATES.

AND I BELIEVE IN THIS CASE, IN THE ALLEGATIONS THAT ARE MADE, THE PLAINTIFFS ARE ATTEMPTING TO COMPARE APPLES AND ORANGES. I THINK THE APPLES-TO-APPLES IS THE TAXING EVENT, NOT THE TAX LIABILITY. PLAINTIFFS HAVE ADMITTED, AND THE EVIDENCE DISCLOSES, THAT NO TAXES COLLECTED ON THE MOVEMENT OF VEHICLES WITHIN THE STATE; OF COURSE, THAT'S THEIR COMPLAINT. THE ONLY TAXES COLLECTED IS ON THE FIRST REGISTRATION IN THE STATE; AND I THINK THAT'S WHAT WE HAVE TO COMPARE. IN COMPARING THOSE, THE SALES TAX, THE COMPLIMENTARY TAX OF THE USE TAX IS COLLECTED FROM IN-STATE RESIDENTS AND THE LOCAL SALES

TAX FOR THE PARISH OF RESIDENCE OF THE PURCHASER OF THAT VEHICLE IS COLLECTED BY THE STATE AT THAT TIME. WHEN A VEHICLE IS BROUGHT IN FROM OUT OF STATE AND REGISTERED FOR THE FIRST TIME IN THE STATE OF LOUISIANA, THE COMPLIMENTARY LOCAL USE TAX FOR THE PARISH OF THAT PERSON'S RESIDENCE WHEN THEY MOVE INTO THE STATE OF LOUISIANA IS COLLECTED BY THE STATE. THOSE ARE COMPARABLE EVENTS THAT APPEAR FORM THE EVIDENCE TO BE APPLIED EQUALLY TO THE OUT-OF-STATE RESIDENT AND THE IN-STATE RESIDENT. FOR THAT REASON, THE COURT IS GOING TO GRANT THE MOTION FOR SUMMARY JUDGMENT AND ALLOW PLAINTIFFS TO TAKE THAT UP ON APPEAL IN CONNECTION WITH, IF THEY WISH, IN CONNECTION WITH THEIR WRIT, OR ON DIRECT APPEAL. BECAUSE I BELIEVE THE GRANTING OF THE MOTION FOR SUMMARY JUDGMENT IS APPEALABLE; AND IF A DECLARATION IS REQUIRED THAT THIS JUDGMENT IS APPEALABLE, THEN IN ACCORDANCE WITH THE RECENT AMENDMENTS TO THE CODE OF CIVIL PROCEDURE, THE COURT MAKES THAT DECLARATION. AND THE COURT DENIES THE MOTION FOR SUMMARY JUDGMENT FILED BY THE PLAINTIFFS.

* * *

FILED
FEB 17 1997
/s/ Frances Spruill
Deputy Clerk

APPENDIX D

IMPOSITION OF TAX

Section 2.01. There is hereby levied from and after August 1, 1983, for the purposes stated in the proposition set forth in the preamble to this Ordinance, a tax upon the sale at retail, the use, the lease or rental, the consumption, and storage for use or consumption, of tangible personal property and on sales of services within the Parish as defined herein; and the levy of such tax shall be as follows:

(1) At the rate of one percent (1%) of the sales price of each item or article of tangible personal property when sold at retail in the Parish, the tax to be computed on gross sales for the purpose of remitting the amount of tax due the Parish School Board, and to include each and every retail sale.

(2) At the rate of one percent (1%) of the cost price of each item or article of tangible personal property when the same is not sold, but is used, consumed, distributed, or stored for use or consumption in the Parish, provided there shall be no duplication of the tax.

(3) At the rate of one percent (1%) of the gross proceeds derived from the lease or rental of tangible personal property, as defined herein, where the lease or rental of such property is an established business, or part of an established business, or the same is incidental or germane to the said business.

(4) At the rate of one percent (1%) of the monthly lease or rental price paid by lessee or rentee, or contracted or agreed to be paid by lessee or rentee to the owner of the tangible personal property.

(5) At the rate of one percent (1%) of the gross proceeds derived from the sale of services, as defined herein.

* * *

Section 5.03. A credit against the use tax imposed by this Ordinance shall be granted to taxpayers who have paid a similar tax upon the sale or use of the same tangible personal property in another Municipality or Parish in the State of Louisiana, or Municipality or County in a state other than Louisiana. The credit provided herein shall be granted only in the case where the Municipality or Parish in the State of Louisiana, or the Municipality or County in a state other than Louisiana, to which a similar tax has been paid grants a similar credit as provided herein, provided that members of the armed forces who are residents of the Parish and whose orders or enlistment contracts stipulate a period of active duty of two years or more and who purchase automobiles outside of the Parish, in a Municipality or Parish in the State of Louisiana, or a Municipality or County in a state other than Louisiana while on such tour of active duty shall be granted such credit in connection with the purchase of such automobiles whether or not the Municipality or Parish in the State of Louisiana, or the Municipality or County in a state other than Louisiana to which such tax thereon has been paid grants a similar credit as herein provided. The proof of payment of a

similar tax to another Municipality or Parish in the State of Louisiana, or to a Municipality or County in a state other than Louisiana shall be made according to rules and regulations promulgated by the Collector. In no event shall the credit be greater than the tax imposed by the Parish School Board upon the particular tangible personal property which is the subject of the use tax imposed by this Ordinance.

* * *

APPENDIX E

DIVISION 4. IMPOSITION

Sec. 150-576. Imposition of tax.

(a) There is hereby levied, for general municipal purposes, a tax upon the sale at retail, the use, the consumption, the distribution and the storage for use or consumption in the city of each item or article of tangible personal property, upon the lease or rental of such property and upon the sale of services within the city, provided that this tax shall not be applicable to banquet gratuities, tips or gifts for distribution in total to restaurant service personnel which are included as a separate item on restaurant bills, the levy of such tax to be as follows:

(1) At the rate of 2½ percent of the sales price of tangible personal property when sold at retail in the city;

(2) At the rate of 2½ percent of the cost price of tangible personal property when it is not sold, but is used, consumed, distributed or stored for use or consumption in the city, except that there shall be no duplication of the tax;

(3) At the rate of 2½ percent of the amount paid or charged for the lease or rental of tangible personal property, when the lease or rental of such property is an established business or part of an established business or is incidental or germane to any such business;

(4) At the rate of 2½ percent of the lease or rental price paid by a lessee or rentee or contracted or agreed to be paid by a lessee or rentee to the owner of tangible personal property;

(5) At the rate of 2½ percent paid or charged upon the sale of services.

(b) Reserved.

(Code 1956, § 56-21)

State law reference – Similar provisions, R.S. 47:302.

Sec. 150-577. Tax in addition to others.

The tax levied by this article is in addition to all other taxes whether levied in the form of excise, license or privilege taxes levied by any other city ordinance.

(Code 1956, § 56-22)

State law reference – Similar provisions, R.S. 47:302(C).

Sec. 150-578. Use, etc., equivalent to sale.

(a) The tax imposed under R.S. 47:302 shall be collectible from all persons, as hereinafter defined, engaged as dealers, as hereinafter defined.

(b) On all tangible personal property imported, or caused to be imported, from other states or other political subdivisions of this state or a foreign country and used by dealer, the dealer, as thus defined, shall pay the tax imposed by this article on all articles of tangible personal property so imported and used, the same as if such article had been sold at retail for use or consumption in this city. For the purpose of this article, use, or consumption, or distribution or storage to be used or consumed in this city of tangible personal property shall each be equivalent to a sale at retail, and the tax shall thereupon immediately levy and be collected in the manner provided herein;

provided, that there shall be no duplication of the tax in any event.

(c) a credit against the use tax imposed by this article shall be granted to taxpayers who have paid a similar tax upon the sale or use of the same tangible personal property in another state. The credit provided herein shall be granted only in the case where the state to which a similar tax has been paid grants a similar credit as provided herein, provided that members of the armed forces who are citizens of this state and whose orders or enlistment contracts stipulate a period of active duty of two years or more and who purchase automobiles outside of this city while on such tour of active duty shall be granted such credit in connection with the purchase of such automobiles whether or not the state to which such tax thereon has been paid grants a similar credit as herein provided. The amount of the credit shall be calculated by multiplying the rate of the similar tax paid in the other state by the cost price which is subject to this city's use tax at the time of the importation of the tangible personal property. The proof of payment of a similar tax to another state shall be made according to rules and regulations promulgated by the director of the department of finance. In no event shall the credit be greater than the tax imposed by this city upon the particular tangible personal property which is the subject of this city's use tax.

(Code 1956, § 56-23)

Sec. 150-526. Credit for similar tax paid in another state or in another parish or municipality of this state.

The provisions of this article shall not apply in respect to the use, consumption, distribution or storage of tangible personal property upon which a like tax equal to or greater than the amount imposed by this chapter has been paid in a state other than this state or to any other parish or municipality of the state, the proof of the payment of such tax to be according to rules and regulations made by the director. If the amount of tax paid in a state other than this state or in any other parish or municipality of the state is in an amount less than the amount of tax imposed by this article, the dealer shall pay to the director an amount equivalent to the difference between the total tax as imposed by this article and the amount paid to such other taxing jurisdiction.

(Code 1956, § 56-31)

Supreme Court, U.S.
FILED
OCT 22 1999
CLERK

(2)

No. 99-521

In the Supreme Court of the United States

OCTOBER TERM, 1999

LESLIE FITZGERALD, ELIZABETH HARLING, CHARLES HUGGINS

Petitioners

VERSUS

RICHARD STALDER, INDIVIDUALLY, AND IN HIS CAPACITY AS SECRETARY, LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, ET AL.

Respondents

On Petition for a Writ of Certiorari to the Louisiana Supreme Court

Respondent, Natchitoches Parish School Board's, Brief In Opposition to Petition for Writ of Certiorari

UNGARINO & ECKERT
MATTHEW J. UNGARINO
MICHAEL J. TARLETON
Suite 1280, Lakeway Two
3850 North Causeway Boulevard
Metairie, Louisiana 70002
(504) 836-7565
Attorneys for Natchitoches Parish School Board, Defendant\Respond

Riverside Printing, L.L.C., 4939 Tchoupitoulas, N. O., LA 70115, (504) 897-5000

138P

PARTIES

The petition accurately lists the parties to this proceeding.

TABLE OF CONTENTS

PARTIES i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE/ACTION OF THE TRIAL AND APPELLATE COURTS 1

REASONS TO DENY THE WRIT 4

I. **THE FIRST TIME USE AND REGISTERING OF VEHICLES BROUGHT INTO LOUISIANA FROM OUT OF STATE AND THE COLLECTION OF LOCAL USE TAXES IN CONNECTION WITH THAT USE AND REGISTRATION DOES NOT VIOLATE THE COMMERCE CLAUSE OR THE EQUAL PROTECTION CLAUSE** 4

LAW 4

ANALYSIS 5

CONCLUSION 10

TABLE OF AUTHORITIES

Page

CASES:

Oregon Waste Systems, Inc. v. Department of Environmental Quality of Oregon, 511 U.S. 93 (1994) 5,7

Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977) 5-6

D.H. Holmes Company v. McNamara, 46 U.S. 24 (1988) 4

Halliburton Oil Well Cementing Company v. Riley, 373 U.S. 64 (1963) 2

Halliburton Oil Well Company v. Riley, 373 U.S. 64 (1963) 5

Williams vs Vermont, 472 U.S. 14 (1985) 9

STATEMENT OF THE CASE/ACTION OF THE TRIAL AND APPELLATE COURTS

Petitioners are residents who, upon moving to Louisiana, brought the vehicles owned by them into Louisiana that had been previously registered in a state other than Louisiana. Upon using their vehicle in Louisiana for the first time, petitioners were required to pay local use taxes on the current value of the vehicle they brought into Louisiana. These taxes were paid at the time the vehicle was registered with the State of Louisiana.

Petitioners initially filed a lawsuit alleging that various local taxing authorities, including the Natchitoches Parish School Board (hereinafter referred to as "School Board") through their agent, the Secretary of the Louisiana Department of Safety and Public Corrections and the Administrator of the Office of Motor Vehicles in his capacity as the Vehicle Commissioner for the State of Louisiana (hereinafter referred to as "the State") violated the Commerce Clause found within the United States Constitution and the Equal Protection Clause of the United States Constitution by failing to administer the proper credits against the local use taxes for sales taxes paid in the out-of state jurisdictions when the vehicles were originally purchased.

Petitioners abandoned these arguments and filed a Supplemental and Amending Petition, alleging that the practice of individuals moving into Louisiana and using and registering their vehicles for the first time in Louisiana and having to pay local use taxes, while individuals who had already used and registered their vehicles in Louisiana, but

were moving from parish to parish within Louisiana and not having to pay additional local use taxes was a violation of the Federal Commerce Clause and the Federal Equal Protection Clause. Petitioners sought to certify both a petitioner and defendant class. The District Court denied class certification, finding petitioners failed to put on sufficient evidence to prove the purported class representatives would adequately represent the class and failed to prove the presence of "common character" requirement.

Petitioners and the School Board filed cross motions for Summary Judgment, addressing the merits of petitioners' allegations. The Trial Court denied petitioners' Motion for Summary Judgment and granted the School Board's Motion for Summary Judgment. In making its ruling, the Trial Court held the United States Commerce Clause requires equal treatment for in-state and out-of state tax payers, if similarly situated. (Emphasis added) *Halliburton Oil Well Cementing Company v. Riley*, 373 U.S. 64 (1963).

The two groups of taxpayers being compared by petitioners in this litigation are not similarly situated and, therefore, the differential treatment between the two does not adversely affect interstate commerce in violation of the Federal Commerce and Equal Protection clauses. Specifically, the Trial Court found taxpayers similarly situated to a non-Louisiana resident bringing a vehicle into the State for the first time, are those Louisiana residents who purchase a vehicle within the state. All parties to this litigation agree the sales tax paid by the Louisiana residents is the same as the use tax paid by the non-Louisiana residents bringing a vehicle into the State for the first time. Therefore, both tax payers are treated equally under current state law.

The trial judge aptly pointed out that the petitioners are trying to compare apples and oranges, when trying to compare a non-resident bringing a vehicle into Louisiana for the first time with those Louisiana residents who have either paid sales tax on the vehicle when it was purchased in the State or brought the vehicle into the State and paid local use tax when it was first used and registered and then moved the vehicle from one local taxing jurisdiction to another. Once the vehicle has been used and registered within the State, as long as it moves from one local taxing jurisdiction to another within the State, interstate commerce is not affected, and the Federal Commerce and Equal Protection Clause do not come into play.

After the Trial Court denied petitioners' Motion for Summary Judgment and granted the School Board's Motion for Summary Judgment, petitioners sought writs with the First Circuit Court of Appeal on the Trial Court's judgment, denying class certification and denying their Motion for Summary Judgment. Petitioners filed an appeal with the First Circuit Court of Appeal addressing the Trial Court's granting of the School Board's Motion for Summary Judgment. The First Circuit Court of Appeal upheld the Trial Court's rulings denying class certification and finding there was no violation of the interstate commerce clause or the equal protection clause. Petitioners brought a petition for writ of certiorari to the Louisiana Supreme Court, which denied the writ. It is from these rulings that petitioners now seek a writ from this Honorable Court.

REASONS TO DENY THE WRIT

1. THE FIRST TIME USE AND REGISTERING OF VEHICLES BROUGHT INTO LOUISIANA FROM OUT OF STATE AND THE COLLECTION OF LOCAL USE TAXES IN CONNECTION WITH THAT USE AND REGISTRATION DOES NOT VIOLATE THE COMMERCE CLAUSE OR THE EQUAL PROTECTION CLAUSE.

LAW

The United States Supreme Court in *D.H. Holmes Company v. McNamara*, 46 U.S. 24 (1988) recognized the constitutionality of Louisiana's sales and use tax scheme, stating:

> The Louisiana taxing scheme is fairly apportioned, for it provides a credit against its use tax for sales taxes that have been paid in other states. (Citations omitted.)
>
> The Louisiana tax structure likewise, does not discriminate against interstate commerce. *D.H. Holmes, supra.*

"The first step in analyzing any law subject to judicial scrutiny under the United States Commerce Clause is to determine whether it "regulates even handedly with only incidental effects on the interstate commerce, or

discriminates against interstate commerce." (Citations omitted.) As we use the term here, "discrimination" simply means differential treatment of in-state and out-of state economic interest that benefits the former and burdens the latter." *Oregon Waste Systems, Inc. v. Department of Environmental Quality of Oregon*, 511 U.S. 93 (1994).

The United States Supreme Court has held that a state's tax does not violate the commerce clause when the tax has a substantial nexus with the State, the tax is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to benefits provided by the State. *Complete Auto Transit, Inc. v. Brady* , 430 U.S. 274 (1977).

In *Halliburton Oil Well Company v. Riley*, 373 U.S. 64 (1963), the United States Supreme Court stated:

> The conclusion is inescapable: equal treatment for in-state and out of-state tax payers similarly situated is the condition precedent for a valid use tax on goods imported from out of state." (Emphasis added.)

ANALYSIS

In order to show the collection of local use taxes on vehicles brought into Louisiana by individuals moving into Louisiana and using the vehicle for the first time within the State violates the Commerce Clause, the petitioners must show the tax does not have a substantial nexus with Louisiana, the tax is not fairly apportioned and discriminates against interstate commerce, and the tax is not related to benefits provided by the State. *Complete Auto Transit,*

Inc., supra. There has been no issue raised, and petitioners cannot argue the collection of sales and use taxes on vehicles used within the State of Louisiana do not have a close nexus with Louisiana and are not related to benefits such as roads and police protection provided by the State for the use of the vehicles within the State. Therefore, the only issue in dispute is whether the collection of local use taxes from individuals moving into Louisiana, while not collecting local use taxes from Louisiana residents moving from one local taxing jurisdiction to another, discriminates against interstate commerce.

In alleging this practice does discriminate against interstate commerce, the petitioners have compared two separate, distinct and different taxable events. in other words, individuals moving into Louisiana for the first time are not "similarly situated" as individuals who already reside within the State and are simply moving from one local taxing jurisdiction to another. **Specifically, the only taxable event which affects interstate commerce is the initial use and registration of the vehicle within the State**. Therefore, in order to determine whether the registration and collection of local use taxes on vehicles brought into Louisiana by individuals relocating into Louisiana violates the Commerce Clause, it is necessary to compare that tax event with the tax event created when a resident of Louisiana purchases a vehicle within Louisiana and for the first time uses and registers it within the State. In both of these situations, individuals are using and registering their vehicles for the first time within the State, either because they purchased the vehicle within Louisiana or because they owned the vehicle outside of Louisiana and transferred it to Louisiana and registered it with the State. In both of these situations, the

individuals are treated identically. The State's sales and use taxes and local sales and use taxes are collected on both vehicles, based upon the value of the vehicle at the time the taxable event occurred, either the sale within Louisiana, or the bringing of the vehicle into Louisiana. Therefore, there is no differential treatment of in-state and out-of-state economic interest that benefits the former and burdens the latter. *Oregon Waste Systems, Inc., supra.*

Once both vehicles have been registered within the State of Louisiana, and become "Louisiana vehicles", they are treated identically when the use and registration is changed from one parish to another within Louisiana. The Trial Court recognized once the vehicle becomes a "Louisiana vehicle" and remains within Louisiana regardless of whether it stays in one local taxing jurisdiction or moves to various local taxing jurisdiction, **interstate commerce is not affected, and all owners of "Louisiana vehicles" are treated similarly**. Specifically, once a vehicle is used and registered in Louisiana and becomes a "Louisiana vehicle", no local taxing authority collects additional use taxes when a vehicle is moved from one location to another within Louisiana.

Petitioners are attempting to manufacture a Commerce Clause violation where none exits by comparing two separate, distinct and different tax events. As the Trial Court put it, petitioners are comparing apples and oranges. The first tax event occurs when the vehicle is initially used and registered within the State, whether that is based on a sale within Louisiana, or bringing a vehicle into Louisiana from another state. These tax events are treated equally by the State since the appropriate sales and use taxes are collected

on each vehicle. This is the only tax event which affects interstate commerce and intrastate commerce at the same time.

The second tax event deals with vehicles that move their use and registration from one parish to another within Louisiana. This clearly is an intrastate tax event and does not affect interstate commerce because both vehicles have already initially been used and registered with the State and any movement within Louisiana does not affect vehicles brought in from outside of Louisiana. Therefore, whether local tax authorities of Louisiana choose to collect local use taxes on vehicles moving from parish to parish has no effect on interstate commerce and has no effect on the Federal Commerce Clause and/or the Equal Protection Clause.

The Court should note that it is this initial inquiry as to whether the movement of vehicles from one parish to another, once they have been initially used and registered in Louisiana, effects interstate commerce that is determinative of the entire issue brought before this Court. Case law cited by petitioners, while being correct, does not address the critical issue of determining whether an individual bringing a vehicle into Louisiana for the first time is "similarly situated" to an individual who is moving a vehicle already used and registered within the State of Louisiana from one parish to another. The School Board contends these individuals are not "similarly situated" and, therefore, the case law cited to this Court by petitioners' counsel is not applicable to the real issue at hand. The facts of this case clearly indicate, as the Trial and Appellate Courts recognized, that an individual using and registering their vehicle for the first time in Louisiana, (whether it is to bring the vehicle from out of

state or an in-state purchase) is not "similarly situated" with an individual who has used and registered the vehicle within the State and is simply changing its location from one parish to another within the State.

The petitioners cite *Williams vs Vermont* 472U.S. 14 (1985) for the proposition that in-state and out-of-state taxpayers similarly situated should receive equal treatment. The factual basis of *Williams* is different then that in the current litigation. In *Williams*, vehicles registered for the first time in Vermont by new residents were charged an additional tax as compared with vehicles being registered for the first time in Vermont by old residents which were not charged an additional tax. While defendants agree that in-state and out-of-state taxpayers, similarly situated, should be treated equally, the two groups of taxpayers being compared by petitioners in the present litigation are not similarly situated and therefore, *Williams* is not relevant.

Petitioners argue the lower courts erred in focusing on the registration of a vehicle as the only event that affects interstate commerce. What petitioners fail to recognize is numerous individuals use vehicles within Louisiana without the necessity of registering those vehicles. Specifically, tourist and other short-term visitors are under no obligation to register their vehicles and therefore are not levied a tax under any circumstance. Therefore, while the tax is based upon use of the vehicle within the state, the triggering event for that tax is the registration of the vehicle within the state. As previously discussed, **individuals registering their vehicle for the first time within Louisiana, whether they are a new resident or an old resident are treated identically under the Louisiana tax scheme.**

Finally, petitioners argue that the local taxing authorities enforce their taxes only against persons who move from other states. This argument is clearly wrong and misleading based upon the facts agreed-upon by the parties to this litigation. It has never been contested that the local taxing authorities collect either sales or use taxes from individuals, regardless of whether they are new or old residents, using and registering their vehicles for the first time within Louisiana.

For these reasons, the writ should be denied.

CONCLUSION

For the reasons set forth above, it is the School Board's contention that the Trial and Louisiana First Circuit and Louisiana Supreme Court properly ruled in denying both petitioners' Motion for Class Certification and petitioners' Motion for Summary Judgment. No reason exists to grant this writ.

Respectfully submitted,

UNGARINO & ECKERT

MATTHEW J. UNGARINO (#15061)
MICHAEL J. TARLETON (#21388)
Suite 1280, Lakeway Two
3850 North Causeway Boulevard
Metairie, Louisiana 70002
(504) 836-7565
ATTORNEY FOR NATCHITOCHES PARISH SCHOOL BOARD, DEFENDANT/RESPONDENT

(3)

Supreme Court, U.S.
FILED
NOV 2 - 1999
OFFICE OF THE CLERK

No. 99-521

In The

Supreme Court of the United States

LESLIE FITZGERALD, ELIZABETH HARLING AND CHARLES HUGGINS,

Petitioners,

versus

RICHARD STALDER, individually, and in his capacity as Secretary, LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Louisiana

PETITIONERS' REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

FREDERICK R. PARKER, JR.
Attorney at Law
400 Travis Street, Suite 1601
Shreveport, Louisiana 71101
(318) 222-4396
Counsel of Record

J. PATRICK HENNESSY
PETERS, WARD, BRIGHT & HENNESSY
400 Texas Street, Suite 1000
P. O. Box 91
Shreveport, Louisiana 71161-0091
(318) 221-8000

Attorneys for Petitioners

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

178

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

ARGUMENT 1

I. The Respondent's Brief Contains Two Significant Misrepresentations of Fact 1

II. Current Louisiana Residents Who Move from One Local Jurisdiction to Another Within the State Do *Not* Pay the Same Amount of Tax as Persons Who Move from Other States..... 4

III. One's Liability for a Local Use Tax Does Not Turn Upon the Registration of a Vehicle..... 6

CONCLUSION 9

APPENDIX F – Deposition of Judith Speziale, taken on March 29, 1996, pages 35-38.....App. 1

APPENDIX G – Section 4.06(1)(b) excerpted from the Natchitoches Parish School Board Sales and Use Tax Ordinance .....App. 4

APPENDIX H – Section 150-601 excerpted from the New Orleans Code.....App. 5

APPENDIX I – Section 3.02 excerpted from the Natchitoches Parish School Board Sales and Use Tax Ordinance .....App. 6

TABLE OF AUTHORITIES

Page

STATUTES

Natchitoches Parish School Board Sales and Use Tax Ordinance 6, 7, 8

New Orleans Code 7

ARGUMENT

I. The Respondent's Brief Contains Two Significant Misrepresentations of Fact

The Respondent's Brief contains two related and significant misrepresentations of fact. First, the Respondent states that *"all parties to this litigation agree the sales tax paid by the Louisiana residents is the same as the use tax paid by the non-Louisiana residents bringing a vehicle into the State for the first time."* (Brief at p. 2). As the Petitioners explained in their Petition for Writ of Certiorari, and as illustrated by the example set forth in Part II below, it is quite clear that current Louisiana residents who move from one local jurisdiction to another within the State do *not* pay the same amount of taxes as persons who move into the same jurisdictions from other States. The Court would not be faced with this issue if the Respondent's statement were true.

The Respondent also states that *" . . . petitioners argue that the local taxing authorities enforce their taxes only against persons who move from other states. This argument is clearly wrong and misleading based upon the facts agreed-upon by the parties to this litigation"* (Brief at p. 10). As noted in the Petition, the local taxing authorities in Louisiana openly admit that, as a matter of policy, they enforce their *use taxes* only against persons who move into their jurisdictions and import property from other States, and they never enforce these taxes against current Louisiana residents who move into the same jurisdictions and import property from elsewhere in the State. The record clearly reflects this admission, as evidenced by the deposition testimony of the Respondent's designated representative,

relevant excerpts of which are included in Appendix F hereto.[1]

As explained in the Petition for Writ of Certiorari, the proper analysis in this case would compare the *use taxes* paid by Louisiana residents and the *use taxes* paid by non-Louisiana residents, not the *sales taxes* paid by Louisiana residents and the *use taxes* paid by non-Louisiana residents. This latter view results in only a partial analysis,

---

[1] Specifically, the fact that the local authorities enforce their use taxes only against non-residents was established by the testimony of Judith Speziale, the designated representative of the Vehicle Commissioner, who collects use taxes as the Respondent's agent. This testimony established two significant facts, neither of which has ever been contested. First, the local authorities enforce their use taxes only against persons who move into their respective jurisdictions from other States; they never enforce these taxes against persons who move from elsewhere in Louisiana. Second, the local authorities never grant use tax credits for sales taxes paid in other local jurisdictions, whether in Louisiana or in another State. Accordingly, current Louisiana residents who move within the State and who paid no local sales taxes when they bought their cars, as well as those who did pay such taxes, but at a lower rate than the use taxes imposed in their new domicile, are able to avoid paying local use taxes when they move simply because they already are Louisiana residents. It is not a tax credit, therefore, that insulates current residents from their liability for use taxes when they move within the State; rather, it is their status as residents, against whom these taxes are never enforced. It was the discovery of these facts that led the Petitioners to abandon their original claims that they were entitled to credits for taxes they had paid to local authorities in other States and to assert, instead, that they are entitled to a refund in the entire amount of the local use taxes they were required to pay in Louisiana.

because it compares only the local *sales taxes* paid by a resident who buys a car in a local jurisdiction and *remains* in that jurisdiction with the local *use taxes* paid by a person who moves into that jurisdiction from another State. It does not compare the local *use taxes* paid by a current resident who moves from one local jurisdiction to another within the State and the local *use taxes* paid by a person who moves into the same jurisdiction, but from another State.

The Petitioners recognize, as the lower Courts held, that the person who buys a car in a local jurisdiction and remains in that jurisdiction is similarly situated with a person who moves into the same jurisdiction and imports a car from another State. In these circumstances, the current resident would pay the same amount in local *sales taxes* as the new resident would pay in local *use taxes*. In fact, this is the very purpose of a use tax; that is, to bring each of these parties to an equal position regarding the total amount of tax paid. Yet, just as these persons are similarly situated, so, too, are the current Louisiana resident who *moves* from one local jurisdiction to another in the State and the non-Louisiana resident who moves into the same local jurisdiction from another State. The practice complained of is that the current resident *is not required to pay any local use taxes* to the authorities in his new domicile, even if he paid no local sales taxes when he bought his car. The similarly situated person who moved from another State, however, *is required to pay a local use tax*. It is this disparity that the Respondent ignores and that the lower Courts failed to recognize.

It is important to bear in mind that the ordinances, as written, impose the use tax uniformly on *all tangible personal property brought into the taxing jurisdiction,* whether from another State or from another city or parish within Louisiana. By enforcing the use tax only against non-Louisiana residents, however, the local taxing authorities have effectively rewritten the ordinances to impose the tax on *the use of tangible personal property within the taxing jurisdiction when the property is imported from another State,* and to exempt from the tax *the use of tangible personal property within the taxing jurisdiction when the property is imported from other local jurisdictions within Louisiana.*

II. Current Louisiana Residents Who Move from One Local Jurisdiction to Another Within the State Do *Not* Pay the Same Amount of Tax as Persons Who Move from Other States

As noted in the Petition for Writ of Certiorari, each local taxing authority in Louisiana imposes its own taxes independently of the other political subdivisions of the State, and they do so at rates that vary from one jurisdiction to another (from zero to 5%). Cameron Parish, for example, imposes no local sales or use taxes at all, while the various Orleans Parish authorities impose their taxes at the combined rate of 5%. Also as noted in the Petition (and re-emphasized above), the local taxing authorities in Louisiana enforce their use taxes only against persons who move into their jurisdictions from other States; they never enforce these taxes against current Louisiana residents who move from other local jurisdictions within the State. To consider this practice together with the fact that

the various local jurisdictions impose their taxes at different rates is to recognize that Louisiana residents do *not* pay the same amount of sales taxes as non-residents pay in use taxes. A simple example illustrates the point.

Consider the application of the local sales and use tax ordinances to three different taxpayers. The first taxpayer, "Orleans," purchases a car for $20,000 in New Orleans, where he resides, and he is required to pay local sales taxes at the rate of 5% of the purchase price, or $1,000. The second taxpayer, "Cameron," moves to New Orleans from Cameron Parish. While he was a resident of Cameron Parish, Cameron purchased exactly the same kind of car that Orleans bought. Because Cameron Parish imposes no local sales or use taxes, however, Cameron did not have to pay any local sales taxes when he bought his car. Nor will he have to pay any local use taxes when he moves to New Orleans, because the local authorities do not enforce their taxes against current Louisiana residents who move into the City from other local jurisdictions in the State, notwithstanding that the local ordinances on their face impose the use tax equally on Louisiana residents and non-residents.

Now consider a third taxpayer, "Texas." Texas moves into New Orleans from the State of his namesake, and he brings with him the same kind of car that Cameron owns. Unlike Cameron, however, Texas will be required to pay a 5% use tax on the $20,000 value of his car, or $1,000. In other words, Texas, who moves from another State, will be required to pay a local tax that Cameron, the current Louisiana resident, will not have to pay. Thus, contrary to the Respondent's assertion, current Louisiana residents such as Cameron who move from one local jurisdiction to

another within the State do *not* pay the same amount of taxes as persons such as Texas who move from other States. This disparity would not exist if the New Orleans ordinances were enforced as written.

Given this example, the Respondent would have the Court focus on the fact that Texas would have to pay the same amount of local *use taxes* as Orleans had to pay in local *sales taxes*. This approach, which the lower Courts adopted, fails to recognize the disparity in the treatment of Cameron and Texas, both of whom engaged in the same taxable event – the importation of an item of tangible personal property for use in New Orleans. As between these persons, only Texas would be subject to the local use tax. Cameron would be freed from his obligation simply because he moved from elsewhere in Louisiana, and without regard to the fact that he paid no similar taxes when he bought his car.

III. One's Liability for a Local Use Tax Does Not Turn Upon the Registration of a Vehicle

The Respondent argues in its Brief that "while the tax is based upon use of the vehicle within the state, the triggering event for that tax is the registration of the vehicle within the state." (Brief at p. 9). This argument confuses the time at which the tax accrues with the time at which it is to be collected.

It is clear from the governing ordinances that the registration of a vehicle with the State has nothing to do with one's liability for local use taxes, which are imposed upon "the *use* . . . of tangible personal property . . . *within the Parish*" (Natchitoches Parish School Board Sales and

Use Tax Ordinance, Section 2.01; Petition, Appendix D), or upon "the *use . . . in the city* of each item or article of tangible personal property" (New Orleans Code, Art. VI, Section 150-576; Petition, Appendix E).

It is true that each local taxing authority, as an administrative matter, provides for the *collection* of its vehicle use taxes by the Louisiana Vehicle Commissioner when the taxpayer registers his vehicle after the tax has accrued. For example, Section 4.06 (1)(b) of the Natchitoches Parish School Board Sales and Use Tax Ordinance (Appendix G) provides that "the tax *levied* by this Ordinance [*i.e.*, by Section 2.01] on the *use* of any such vehicle in the Parish shall be *due* at the time first registration in the Parish is required by the Vehicle Registration License Tax Law (R.S. 47:451, et seq.)." (See Art. VI, Section 150-601 of the New Orleans Code (Appendix H) for the same rule in that jurisdiction). The act of registration, therefore, does not represent the "triggering event" for the tax, as the Respondent suggests. Rather, the local taxing authorities merely have chosen, as a matter of administrative convenience, to *collect* their vehicle use taxes when the vehicle is to be registered with the Vehicle Commissioner (or when the registration is to be renewed, in the case of a taxpayer who has moved into the taxing jurisdiction from elsewhere in Louisiana).

The Respondent's argument that "tourist and other short-term visitors are under no obligation to register their vehicles and therefore are not levied a tax under any circumstance" is equally unsound. (Brief at p. 9). It is not the lack of any duty to register their vehicles that insulates these persons from local use taxes, but the failure of their activity to rise to the level of a taxable use. Section

3.02 of the Natchitoches Parish School Board Sales and Use Tax Ordinance (Appendix I), for example, indicates an intention to apply the tax only to "tangible personal property *after it has come to rest in the Parish and has become a part of the mass of property in the Parish*" (emphasis added). The Respondent's argument to the contrary is simply disingenuous, if not wholly irrelevant.

Finally, the hypothetical example set forth in Part II above illustrates the error of the Respondent's contention that "individuals registering their vehicle for the first time within Louisiana, whether they are a new resident or an old resident are treated identically under the Louisiana tax scheme." (Brief at p. 9). The disparity in treatment could not be more clear.

CONCLUSION

The local taxing authorities in Louisiana are enforcing their use tax ordinances in a manner that violates the Commerce Clause of the Constitution and the Equal Protection Clause of the Fourteenth Amendment. The effect of this treatment is far-reaching: *during the three-year period preceding the filing of this case, over 90,000 persons had been affected by the violations complained of here.* That number has increased substantially during the six years that this litigation has been pending, and it will continue to grow as the local authorities carry on with their established practice of enforcing their use taxes only against persons who move into their jurisdictions from other States. Because the State courts now have expressly approved of this practice, generations of future citizens will be adversely affected unless this Court intercedes. For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

FREDERICK R. PARKER, JR.
Attorney at Law
400 Travis Street, Suite 1601
Shreveport, Louisiana 71101
(318) 222-4396
Counsel of Record

J. PATRICK HENNESSY
PETERS, WARD, BRIGHT & HENNESSY
400 Texas Street, Suite 1000
Post Office Box 91
Shreveport, Louisiana 71161-0091
(318) 221-8000

Attorneys for Petitioners

APPENDIX F

* * *

[p. 35] A East Baton Rouge Parish.

Q All right. And any person who comes into the state of Louisiana and moves into East Baton Rouge Parish is going to owe at least four percent use tax?

A Yes.

Q And that's going to be local tax, isn't it?

A Yes.

Q To East Baton Rouge Parish and the entities within East Baton Rouge Parish?

A Right, based on the current market value of the vehicle. And we determine that by taking seventy-five percent of the retail value.

Q So if they come in with a $10,000 – a vehicle that has a NADA book value of $10,000, you take 7500 and multiply four percent times that, and that's going to be the minimum tax they're going to pay?

A That's right.

Q And, of course, if they came from Alabama, they're going to pay six percent?

A That's right.

Q Now, I want to contrast that with a person – and as we discussed yesterday, I believe Cameron Parish has no local sales tax?

[p. 36] A Right.

Q And that's a parish in Louisiana. If a person moved from Cameron Parish – a Louisiana resident – to East Baton Rouge Parish and their vehicle came up to be re-registered; in other words, it had already been registered in Cameron and they move to East Baton Rouge, would you collect any tax from that person whatsoever?

A Taxes are collected only at the time the initial title application is made. If the application was made in Cameron Parish, they would pay the applicable taxes in that area, and then they could move anywhere in the state of Louisiana that they wanted to and not be taxed on that vehicle any more.

Q Just so that I'll understand, the person that came in from Alabama – Alabama's the first one on the list, so we'll just use that one. If they came in from Alabama and moved to East Baton Rouge Parish, even if that person had paid eight percent tax in Alabama, no matter how much tax he paid, if he paid eight percent in Alabama, he's going to pay another six percent when he moves to East Baton Rouge Parish?

A That's right.

[p. 37] Q But if a person moved on the same day from Cameron Parish where he had registered the vehicle and paid four percent tax and he moved to East Baton Rouge Parish, he would pay no additional tax?

A That's right.

Q If the person moved from Alabama to Cameron Parish, he would pay two percent tax?

A Right.

Q That same person following my same hypothetical?

A Right.

Q The registration when a car is registered in Louisiana – I think it varies from different vehicles – but as to automobiles, registration is good for two years?

A That's right.

Q And then you have to renew it?

A Right.

Q And what I was trying to get at a minute ago is that when you renew your registration, if you're still in Louisiana, it doesn't matter what parish you moved from or to, you're not going to pay any additional tax?

A Not state tax, no, as in taxes to us.

Q You would not collect any tax?

[p. 38] A We would not collect any tax upon re-registration of a vehicle, renewal of registration.

Q To move from out of state – from anywhere out of the state of Louisiana to the state of Louisiana creates a taxable event?

A That's right.

Q But to move from any parish in Louisiana to another parish in Louisiana does not create a taxable event?

A That's right.

* * *

APPENDIX G

* * *

Section 4.06. The tax imposed by this Ordinance upon the sale or use of any motor vehicle, automobile, motorcycle, truck, truck-tractor, trailer, semi-trailer, motor bus, house trailer, or any other vehicle subject to the Louisiana Vehicle Registration License Tax of the State of Louisiana shall be collected as provided in this section.

(1) The tax levied by this Ordinance on any such vehicle shall be paid to the Vehicle Commissioner as agent of the Collector of Revenue of the State of Louisiana, at the time of application for a certificate of title or vehicle registration license. No certificate of title or vehicle registration license shall be issued until the tax has been paid.

(a) The tax levied by this Ordinance on the sale of any such vehicle shall be due at the time of registration or any transfer of registration as required by the Vehicle Registration License Tax Law of the State of Louisiana (R.S. 47:451, et seq.).

(b) The tax levied by this Ordinance on the use of any such vehicle in the Parish shall be due at the time first registration in the Parish is required by the Vehicle Registration License Tax Law (R.S. 47:451, et seq.).

* * *

APPENDIX H

DIVISION 5. COLLECTION

Sec. 150-601. Tax collectible from all dealers.

The tax imposed by this division shall be payable upon the retail sales price, as of the moment of the sale, or upon the cost price, as of the moment of the purchase, or upon sales of service, as the case may be, and shall be collectible from all persons engaged as dealers in the sale at retail or those engaged in the use, consumption, distribution and the storage of tangible personal property and/or the sales of services. At the moment of payment of the tax, any tax collected shall become the property of the city.

(1) The tax levied on any such vehicle, which is hereby defined to be any motor vehicle, automobile, motorcycle, truck, truck-tractor, trailer, semitrailer, motorbus, house trailer, or any other vehicle subject to the vehicle registration license tax, shall be paid to the director of the department of finance of the city, (or to the collector of revenue of the state if so delegated by contractual agreement as herein authorized), at the time of application for a certificate of title or vehicle registration license.

* * *

APPENDIX I

EXEMPTIONS AND EXCLUSIONS FROM TAX

* * *

Section 3.02. It is not the intention of this Ordinance to levy a tax upon articles of tangible personal property imported into the Parish, or produced or manufactured in the Parish, for export; nor is it the intention of this Ordinance to levy a tax on bona fide interstate commerce. It is, however, the intention of this Ordinance to levy a tax on the sale at retail, the use, the consumption, the distribution, and the storage to be used or consumed in the Parish, of tangible personal property after it has come to rest in the Parish and has become a part of the mass of property in the Parish.

* * *